

Appendix 1

Definitions and Elections Code

Provisions Affecting Ballot Measure Activities

Note: Except for the text of Elections Code Sections 18320, 18650, and 18680 at the end of this appendix, all statutory references are to the California Government Code. The Political Reform Act is found in Government Code Sections 81000-91014. Commission regulations may be found in Title 2, Sections 18109-18997 of the California Code of Regulations.

Contribution

(Section 82015; Regulations 18215 and 18225.7)

A contribution is a payment, including a loan, a forgiveness of a loan, a third party payment on a loan, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. A payment made at the behest of an officeholder, candidate, or committee is a contribution to the officeholder, candidate, or committee unless full and adequate consideration is received for making the payment.

A payment is “made at the behest of” an officeholder, candidate, or committee if it is made under the control or at the direction of the officeholder, candidate, or committee. It is also made at the behest if it is made in cooperation, consultation, coordination, or concert with, or at the request or suggestion of the officeholder, candidate, controlled committee, official committee of a political party, or organization formed or existing primarily for political purposes.

Common Contributions

- Tickets purchased for political events such as dinners, luncheons, rallies, and similar fundraising events.
- The officeholder or candidate’s own money or property.
- Discounts or rebates not generally extended to the public.
- Television, radio, or newspaper discounts or rebates not equally extended to both the proponents and opponents of a specific ballot measure.
- Payments made by any person for the services of another person rendered on behalf of a candidate or committee. However, if an individual is paid by his or her employer, those payments are not contributions unless employees spend more than 10% of their compensated time during a calendar month working on behalf of an officeholder, candidate, or committee.
- Transfer of anything of value a committee receives from another committee, unless the committee pays the fair market value.

Contributions; Exceptions

- A home or office meeting or fundraising event held in an occupant’s home or office, if the total costs for the meeting or event are \$500 or less. If more than \$500 is spent, the total amount is a contribution.
- Any individual’s volunteered personal services or payments for his or her own travel expenses if the payments are made

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- voluntarily and without any understanding or agreement that the individual will be repaid or reimbursed.
- A payment made by a candidate or committee for another candidate to attend the paying candidate or committee's fundraiser.
 - A payment made by a ballot measure committee telling the voters which candidates support or oppose the ballot measure, as long as there is no express advocacy on behalf of the endorsing candidate, or opposition to his or her opponent.
 - Payments for a news story, commentary, or editorial by a regularly-published newspaper, magazine, or other periodical of general circulation that routinely carries news articles, and commentary of general interest.
 - Payments for a news story, commentary, or editorial by a federally-regulated broadcast outlet (radio or television).
 - A payment by an organization for its regularly-published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, or other affiliated individuals or those who request or purchase the publication. (This regulatory exception has been largely subsumed by a broader statutory provision concerning communications by an organization to its members. See the last bullet, below.)
 - A payment for a debate or other forum in which the proponent of a ballot measure and at least one opponent, or their respective representatives, are invited to participate in equal numbers.
 - A payment made by a bona fide service, social, business, trade, union, or professional organization or group for reasonable overhead expenses associated with the organization's regularly-scheduled meeting at which a candidate or an individual representing either side of a ballot measure speaks, if the organization pays no additional costs in connection with the speaker's attendance.
 - A payment made by a candidate for a communication in support of or opposition to a ballot measure, if the communication features the endorsing candidate or clearly identifies him or her as the sponsor of the communication. This exception does not include a monetary contribution from a candidate or his or her controlled committee to a ballot measure committee.
 - A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made to the sponsored committee shall be made by separate instrument. "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee.
 - When a candidate requests someone else make a contribution to another candidate or committee not controlled by the candidate making the request, a contribution has not been made to the candidate making the request.
 - Payments for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure, provided these payments are not made for general public advertising, such as broadcasting, billboards, and newspaper advertisements. However, such payments are reportable if made by the organization's sponsored committee (e.g., an organization's sponsored committee). In addition, political party committees must

report payments for communications to their members in the same manner as contributions and independent expenditures.

Controlled Committee

(Section 82016)

If an officeholder, candidate, or state measure proponent exerts significant influence on the actions or decisions of a recipient committee, he or she controls the committee. In almost all cases, officeholders or candidates control the primary committee that is set up to support their officeholder or candidacy status. Committees can even be controlled indirectly through agents of candidates and officeholders.

Independent Expenditure

(Section 82031)

“Independent expenditure” means an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly-identified candidate or the qualification, passage, or defeat of a clearly-identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

Mass Mailing

(Section 82041.5)

“Mass mailing” means over two hundred substantially similar pieces of mail, but does not include a form letter or other mail that is sent in response to an unsolicited request, letter, or other inquiry.

Measure

(Section 82043)

“Measure” means any constitutional amendment or other proposition that is submitted to a popular vote at an election by

action of a legislative body, or which is submitted or intended to be submitted to a popular vote at an election by initiative, referendum, or recall procedure, whether or not it qualifies for the ballot.

Payment

(Section 82044)

“Payment” means a payment, distribution, transfer, loan, advance, deposit, gift, or other rendering of money, property, services, or anything else of value, whether tangible or intangible.

Person

(Section 82047)

An individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

Primarily Formed Committee

(Section 82047.5)

A recipient committee that is formed or exists primarily to support or oppose:

- (a) A single candidate; or
- (b) A single measure; or
- (c) A group of specific candidates being voted upon in the same city, county, or multicounty election; or
- (d) Two or more measures being voted upon in the same city, county, multicounty, or state election.

Also see the definition of “controlled committee,” above. A primarily formed committee is one that is not controlled by the candidate or officeholder the committee supports.

Proponent

(Section 82047.6)

“Proponent of a state ballot measure” means “proponent” as defined in Section 9002 of the Elections Code. (See http://www.sos.ca.gov/elections/elections_resources.htm.)

Sponsored Committee

(Section 82048.7)

A recipient committee, other than a candidate controlled committee, which has one or more sponsors. Any person, except a candidate or other individual, may sponsor a committee. A person sponsors a committee if any of the following apply:

- (a) The committee receives 80 percent or more of its contributions from the person or its members, officers, employees, or shareholders.
- (b) The person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.
- (c) The person, alone or in combination with other organizations, provides all or nearly all of the administrative services for the committee.
- (d) The person, alone or in combination with other organizations, sets the policies for soliciting contributions or making expenditures of committee funds.

Elections Code Sections

18320

- (a) This act shall be known and may be cited as the “California Political Cyberfraud Abatement Act.”
- (b) It is unlawful for a person, with intent to mislead, deceive, or defraud, to commit an act of political cyberfraud.
- (c) As used in this Section:

- 1) “Political cyberfraud” means a knowing and willful act concerning a political Web site that is committed with the intent to deny a person access to a political Web site, deny a person the opportunity to register a domain name for a political Web site, or cause a person reasonably to believe that a political Web site has been posted by a person other than the person who posted the Web site, and would cause a reasonable person, after reading the Web site, to believe the site actually represents the views of the proponent or opponent of a ballot measure. Political cyberfraud includes, but is not limited to, any of the following acts:

- A) Intentionally diverting or redirecting access to a political Web site to another person’s Web site by the use of a similar domain name, meta-tags, or other electronic measures.
- B) Intentionally preventing or denying exit from a political Web site by the use of frames, hyperlinks, mousetrapping, popup screens, or other electronic measures.
- C) Registering a domain name that is similar to another domain name for a political Web site.
- D) Intentionally preventing the use of a domain name for a political Web site by registering and holding the domain name or by reselling it to another with the intent of preventing its use, or both.

- 2) “Domain name” means any alphanumeric designation that is registered with or assigned by any domain name registrar, domain name registry, or other domain registration

authority as part of an electronic address on the Internet.

- 3) “Political Web site” means a Web site that urges or appears to urge the support or opposition of a ballot measure.

18650

No one shall knowingly or willfully permit the list of signatures on an initiative, referendum, or recall petition to be used for any purpose other than qualification of the initiative or referendum measure or recall question for the ballot, except as provided in Section 6253.5 of the Government Code. Violation of this Section is a misdemeanor.

18680

Every person who is entrusted with money or things of value for the purpose of promoting or defeating any initiative, referendum, or recall petition or any measure that has qualified for the ballot is a trustee of the money or things of value. If a person wrongfully appropriates the money or things of value to any use or purpose not in the due and lawful execution of the trust, the person shall be punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. The following expenses are within the due and lawful execution of the trust:

- (a) Securing signatures to initiative, referendum, or recall petitions.
- (b) Circulating initiative, referendum, or recall petitions.
- (c) Holding and conducting public meetings.
- (d) Printing and circulating prior to an election:
 - (1) Specimen ballots.

(2) Handbills.

(3) Cards.

(4) Other papers.

(e) Advertising.

(f) Postage.

(g) Expressage.

(h) Telegraphing.

(i) Telephoning.

(j) All salaries and expenses of:

(1) Campaign managers.

(2) Lecturers.

(3) Solicitors.

(4) Agents.

(5) All persons employed in transacting business at headquarters or branch offices, if the business transacted is related to promoting or defeating an initiative, referendum, or recall petition or any measure which has qualified for the ballot.

(k) Maintaining headquarters and branch offices.

(l) Renting of rooms for the transaction of the business of an association.

(m) Attorney’s fees and other costs in connection with litigation where the litigation arises directly out of any of the following:

(1) Activities related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.

(2) The enactment, by the initiative process, of any ordinance, charter amendment, statute, or constitutional amendment.

(3) An election contest or recount.

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- (4) A violation of state or local campaign, disclosure, or election laws.

The amendment of this Section by adding subdivision (m) thereto, made at the 1991-92 Regular Session of the Legislature, does not constitute a change in, but is declaratory of, the existing law.

Expenses for food, clothing, shelter and other personal needs of the trustee are not within the due and lawful execution of the trust. However, expenses for travel and necessary accommodations for the trustee are within the due and lawful execution of the trust, if the travel and accommodations are related to promoting or defeating an initiative, referendum, or recall petition or any measure that has qualified for the ballot.

75 Ops.Cal.Atty.Gen. 29 (Opinion No. 91-504)

The California Attorney General has concluded that with respect to surplus campaign funds held by a statewide ballot measure committee after an election, the committee may (1) return the funds to contributors on a pro rata basis; (2) return the funds only to contributors of a specified minimum amount; (3) donate the funds to a nonprofit organization or a nonprofit, tax-exempt corporation; (4) contribute the funds to another ballot measure committee, to a candidate committee, or to a political party; (5) use the funds for educational or lobbying efforts with respect to the subject of the ballot measure, if the committee is established for purposes in addition to supporting the ballot measure; or (6) retain the funds for use in a future ballot measure campaign on the same or related subjects.